IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1659 of 2006
To
FIRST APPEAL No. 1681 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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EXECUTIVE ENGINEER & 1 - Appellant(s)
Versus
PATEL SURESHBHAI TRIBHOVANDAS - Defendant(s)

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Appearance :
Mr.S.S.Shah, learned Government Pleader for appellants in First Appeal Nos.1659 to 1669 of 2006

Ms.Bhavika Kotecha, learned Assistant Government Pleader for appellants in First Appeal Nos.1670 to 1681 of 2006
MR H.S.MULIA for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 02/07/2007

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. By filing these appeals under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, the appellants have challenged legality of common judgment and award dated July 29,2005, rendered by the learned Principal Senior Civil Judge, Mehsana in Land Reference Case Nos. 5265 to 5276 of 2003 and 5278 to 5288 of 2003, by which the claimants have been awarded additional amount of compensation at the rate of Rs.277/- per sq.mt. for their acquired lands, in addition to compensation offered to them at the rate of Rs.11/- per sq.mt. by the Special Land Acquisition Officer vide award dated January 6,2003.

2. The Executive Engineer, Dharoi Canal Scheme No.3, Visnagar proposed to the State Government to acquire the lands of village Unava, Taluka Unjha, District Mehsana for the public purpose of

construction of a canal under Dharoi Canal Project. On perusal of the same, the State Government was satisfied that the lands mentioned therein were likely to be needed for the said public purpose. Therefore, a Notification under Section 4(1) of the Act was issued which was published in the Official Gazette on July 26,2002. The owners of the lands were served with notices as required by Section 4 of the Act and an inquiry was conducted. On conclusion of inquiry, a report as contemplated by Section 5A(2) of the Act was forwarded by the Special Land Acquisition Officer to the State Government. On consideration of the same, the State Government was satisfied that the lands of village Unava, specified in the Notification published under Section 4 of the Act, were needed for the public purpose of construction of canal under the Dharoi Canal Project. Therefore, a declaration under Section 6 of the Act was made, which was published in the Official Gazette on December 4, 2002. The interested persons were thereafter served with notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.500/- per sq.mt. However, having regard to the materials

placed before him, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs.11/-per per sq.mt. by his award dated January 6,2003. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court,Mehsana, where they were registered as noticed earlier.

3. On behalf of the claimants, witness Sureshbhai Tribhovandas Patel was examined at Exh.37. After giving particulars of the lands acquired, the witness mentioned that all the lands were fertile as a result of which each claimant was able to raise crops of cumin seeds, spogel seeds, fennels, cotton, wheat etc. during the winter whereas each claimant was able to raise crops of millet,Juwar, pioneer, etc during summer and each claimant was able raise crops of millet, cotton, fennel, Juwar, Tuwar, etc. during monsoon. The witness maintained that each claimant

was able to earn substantial income from the sale of different agricultural produces. After mentioning that price of the lands situated in his village ten years before was Rs.2 lacs per Vigha, the witness maintained that at the time when the notification was published under section 4 of the Act, the price of the lands situated in his village was between 5 lacs to 7 lacs per Vigha, but lesser amount was indicated in sale deeds to avoid payment of stamp duty. The witness maintained before the court that just adjoining his village, village Unjha is situated and that the boundaries of both the villages were touching each other. The witness also maintained that the lands of village Unjha were similar in all respects to the lands of his village and National Highway No.8 was passing through his village. According to this witness, on both the sides of National Highway, industrial units, Banks, big factories, etc. had com up. In order to substantiate his claim that distance between his village and Unjha town was nil, the witness produced Certificate issued by Talati-cum-Mantri of Unava Gram Panchayat at Mark 8/29. The witness further stated that from his village land admeasuring 2735 sq.mt. of Survey No.303/1 was disposed by District Panchayat, Mehsana

vide order dated January 1, 1999 at the rate of Rs.565/- per sq,mt. In order to substantiate this claim, the witness produced copy of the order at mark 8/27. In order to substantiate his claim that the boundaries of both the villages were touching each other, the witness produced village Map at mark 8/30. The witness informed the court that earlier the lands of village Unjha were acquired for construction of Canal under Sipu Project and that the Reference Court had awarded higher compensation as a result of which on the basis of said award, they were entitled to enhanced compensation. The witness produced previous award of the Reference Court relating to the lands of village Unjha at Exh.34. The witness maintained before the Court that a market yard was situated in his village Unava and that it was one of the most important places of pilgrimage for Muslims. The witness further stated before the Court that ancient Jain temples and Jain Caravanserai were also situated in the village. According to this witness, several financial institutions such as State Bank of India, Unava Nagarik Sahakari Bank, Mehsana District Central Co-operative Bank, Mangal Deep Credit Co-operative Society, Maruti Credit Co-operative Society were situated in his village and all educational

facilities were also available. The witness also claimed that in his village there was a big bus-stand from which express buses were available to reach other parts of the State.

Though this witness was cross-examined by the learned counsel for the acquiring authorities, nothing substantial could be elicited nor the assertion made by the witness that lands which were acquired from village Unjha were similar in all respects, including fertility, to the lands acquired in the instant cases, could be demonstrated to be untrue.

4. On behalf of the acquiring authorities witness Rameshchandra Amarsinbhai Thakkar was examined at Exh.40. According to him all the relevant materials were taken into consideration by the Special Land Acquisition Officer while making award under section 11 of the Act and, therefore, the claimants were not entitled to enhanced compensation. However, in his cross-examination, the witness had to admit that he had no personal knowledge about the proceedings which were initiated for acquiring the lands in the instant cases and was deposing before the court on the basis

of official record made available to him. The witness admitted in his cross-examination that Unjha Market Yard was situated just near the sim of village Unava and that several factories had come up in village Unava. The witness had also to admit that Unava was fully developed village.

5. It may be mentioned that the acquiring body had produced certain extracts indicating sale of lands of village Unava alongwith list at Exh.42.

6. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that previous award of the Reference Court, relating to the lands of village Unjha, was a relevant piece of evidence and furnished good guidance for the purpose of determining market value of the lands acquired in the instant case. The Reference Court noticed that Notification under Section 4(1) of the Act was published in the official gazette on March 15, 1992 for the purpose of acquiring the lands of village Unjha whereas in the instant case notification under section 4 of the Act was published in the official Gazette on July 26,2002 and, therefore, in view of gap of time between the two, the claimants were

entitled to the benefit of rise in prices of lands not at the rate of 10% per annum but lumpsum at the rate of 25% per annum. In the ultimate analysis, the Reference Court had awarded additional amount of compensation to the claimants at the rate of Rs.277/- per sq.mt. for their acquired lands by the impugned common award, giving rise to the instant appeals.

7. This Court has heard Mr.S.S.Shah, learned Government Pleader as well as Ms.Bhavika Kotecha, learned Assistant Government Pleader for the appellants and Mr.H.S.Mulia, learned counsel for the claimant/claimants in each appeal at length and in great detail. This court has also considered the paper book supplied by the learned counsels for the appellants, which includes all the documentary as well as oral evidence adduced by the parties before the Reference Court.

8. It is true that the claimants could not make good their assertion that they were earning substantial income from the sale of different agricultural produces. However, the said fact is of no consequence inasmuch as enhanced compensation was never claimed

on yield basis. The record does not indicate that enhanced compensation was also claimed on the basis of comparable sale instances. What was relied upon by the claimants was previous award of the Reference Court relating to the lands of village Unjha, which was produced at Exh.34. A bare perusal of Exh.34 makes it evident that pursuant to publication of Notification in the Official Gazette on March 15,1992 lands of village Unjha were acquired for the public purpose of construction of a canal under Dharoi Project therein the Special Land Acquisition Officer by his award dated September 20, 1995, had offered compensation to the claimants at the rate of Rs.8/- per sq.mt. for irrigated lands and Rs.6/- per sq.mt. for non-irrigated lands. Feeling aggrieved, the claimants had sought references. Accordingly references were made to the District Court, Mehsana where they were numbered as Land Acquisition Reference No.248 of 1997 to 350 of 1997. In those cases, witness Gopalbhai Prabhudas Patel was examined at Exh.18 whereas not an iota of evidence was led on behalf of the acquiring authorities. The claimants in those cases had relied upon two previous awards of the Reference Court relating to the lands of village Unjha itself and after relying upon Exh.11, the

Reference Court by common judgment and award dated August 13,2003 awarded compensation to the claimants at the rate of Rs.231/- per sq.mt.

9. Here in this case the claimants had relied upon certificate dated September 20,2004 issued by the Talati-cum-Mantri, Unava, Taluka Unjha to indicate that the distance between village Unava and village Unjha was nil and that several industrial units, market yards, banks, etc. were situated in village Unava. The Reference Court, without assigning good reasons, has not exhibited this document, which is a relevant piece of evidence. Therefore, the same is ordered to be exhibited and given Exhibit No.46A. Similarly, the claimants had produced copy of order dated May 20,2001 to indicate that land admeasuring 2735 sq.mt. of Survey No.303/1 situated at village Unava was disposed of by District Panchayat vide order dated January 1, 1999 at the rate of Rs.565/- per sq.mt. There was no good reason for the Reference Court not to exhibit this document. Therefore, the same is ordered to be exhibited and given exhibit No.46/B.

10. The relevancy of the previous award of the

Reference Court relating to lands of village Unjha stands satisfactorily established by reliable testimony of the witness examined on behalf of the claimants. Further, the certificate which is ordered to be exhibited by this Court indicates that the distance between Unava and Unjha is nil. If the order dated May 20, 2001 passed by the District Panchayat is taken into consideration, the claimants would be entitled to more compensation than what is awarded to them by the Reference Court because benefit of rise in prices of the lands at the rate of 10% per annum will have to be worked out roughly for a period of 10 years. Similarly, if the allotment of 2735 sq.mt. of land of Survey No.303/1 is taken into account, the claimants would be entitled to more compensation than awarded by the Reference Court. It is well settled principle of law that previous award of the Reference Court relating to a village, which has attained finality, can be relied upon as a good piece of evidence for the purpose of determining the market value of similar lands acquired subsequently from the adjoining village. As observed earlier, it is satisfactorily established by the claimants that the lands which were previously acquired from village Unjha were similar in all respects to the lands

acquired from village Unava. It may be mentioned that previous award of the Reference Court relating to the lands of village Unjha rendered in Land Acquisition Reference No.248 of 1997 to 350 of 1997 was challenged before the High Court in First Appeal Nos.2147 to 2249 of 2004 and those appeals have been dismissed by the court vide judgment dated July 2,2007. Thus, the previous award of the Reference Court relating to the lands of village Unjha has attained finality. Under the circumstances, this Court is of the opinion that the Reference Court did not commit any error in placing reliance upon previous award of the Reference Court relating to the lands of village Unjha for the purpose of determining market value of the lands acquired in the instant case. The amount of compensation awarded by the Reference Court in these cases is not on higher side so as to warrant interference by this court in the instant appeals. On re-appreciation of evidence adduced by the parties before the Reference Court, this Court is of the opinion that correct findings of facts have been recorded by the Reference Court to which well settled principles of law have been applied. The learned counsels for the appellants could not persuade this Court to take a view

different than the one taken by the Reference Court on appreciation of evidence adduced before it. Thus, the appeals, which lack merits, deserve dismissal.

11. For the foregoing reasons, the appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw the decree in terms of this judgment immediately.

(J.M.Panchal,J)

(Smt.Abhilasha Kumari,J)

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